



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

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March 17, 2004

Mr. Roger D. Mowery
Executive Director
Washington State Maritime Cooperative
14805 NE 177th St
Woodinville, Washington 98072

Dear Mr. Mowery,

Thank you for taking the time to provide many thoughtful comments on the issues of Wildlife Rescue in Washington. I, too, appreciate the collaboration and cooperation that we have collectively enjoyed throughout this process and look forward to its continuation.

On March 4th, 2004, you provided me with comments on behalf of Washington State Maritime Cooperative (WSMC) in response to the Washington Department of Fish and Wildlife's (WDFW) draft proposed rules relating to oiled bird rehabilitation standards for Washington. It is my understanding that Puget Sound Steamship Operator's Association (PSSOA) (Mike Moore, personal communication) also endorses these comments.

The comments you provided are reproduced here verbatim, each with a corresponding response.

1. The most significant issue is how many, how fast, etc. The proposed bird cleaning standards should not become effective until performance standards are adopted. What would happen if the care standards are formally adopted and we have a spill with significant bird involvement prior to the performance standards being known? For all concerned, it is important to have these standards available and ready to go, but it is also necessary that the standards be made in conjunction with the applicable planning or performance standards. Planning standards and cleaning procedures need to progress together.

Response: As you have indicated, the development of planning standards for oiled wildlife response is a critical element that needs to be addressed. The issue of "how many, how fast" to which you refer is addressed in the proposed rule within the context of oiled bird care. However, there is no provision in the State's oil spill statutes (RCW 90.56) for the WDFW to address the degree to which planning and readiness shall be provided by a regulated entity. We hope that these issues can be dealt with in a meaningful way in those forums through which it is

authorized. We believe that the development of rules regarding oiled wildlife care standards is a necessary pre-requisite for the subsequent development of meaningful planning standards. I will share this comment with the Department of Ecology.

2. In conjunction with rescue standards and procedures, mobile response capability is important. The need for mobile capability in addition to long term care facilities, given various spill scenarios, should be addressed.

Response: The proposed rule does not specify whether or not rehabilitation facilities should or can be mobile in nature. Petroleum industry stakeholders explicitly requested that the rule package focus on “function-based” rather than “prescriptive” standards. We took those concerns to heart and have developed function-based standards for bird care to the extent practicable.

3. How will triage and release decisions be made? Will there be criteria issued? This needs to be addressed somehow to help match response resources to productive outcomes. Without triage, too many birds might receive rehabilitation efforts that are wasted to the detriment of other oiled wildlife needing attention and without release criteria, too many birds may be held too long.

Response: Issues of triage, euthanasia, and release largely are related to medical evaluation. We chose not to pursue rule making in arenas that are based significantly on medical determinations. The WDFW, in conjunction with veterinarians, rehabilitation experts, and the US Fish and Wildlife Service (USFWS), ultimately will make decisions related to herd healthcare at the time of an oil spill and do so commensurate with state and federal authority. Veterinarian guidelines and best practices methodologies currently exist to help guide those decisions when necessary. We do not believe that this rule making process is an appropriate venue for the development of triage, euthanasia, and release criteria.

4. What are the approved collection processes? This sometimes becomes a controversial issue.

Response: This rule making process is intended to cover those critical components related only to bird rehabilitation. Issues of collection involve coordination between the Wildlife Branch in the Incident Command System (ICS) and both WDFW and the USFWS and their respective enforcement branches. We are unfamiliar with the collection controversies to which you refer, however, this rule making effort in no way hinders or prohibits the engagement of issues that you may have relating to collection. We would be happy to further explore those concerns with you.

5. WSMC would like for the WDFW to expand on and state the basis by which WDFW and USFWS will determine whether or not birds can be transported out of state to other care facilities. We understand that the determination will be made when an ICS is activated for a spill. We suggest that the WDFW provide a checklist, procedural mechanism, or criteria that will be used to make the decision, if and when, a request to transport oiled wildlife out of

state is made on the day of the spill. Doing so, will facilitate and expedite the care of the oiled wildlife, increasing the chances of successful recovery.

Response: The draft proposed rules do not address transport. Decisions relating to interstate transportation of oiled wildlife are made by state and federal authorities at the time of a spill and made primarily on the basis of animal welfare. The WDFW would consider transport to out-of-state rehabilitation facilities that meet or exceed Washington oiled bird rehabilitation standards at the time of a spill when in the best interest of oiled animals. Such considerations would be made in conjunction with our USFWS counterparts.

6. WSMC understands that present Washington State law requires the Washington Department of Fish And Wildlife to chair a coalition of government agencies and other organizations for the purpose of developing a plan for coordinating wildlife rescue planning. For many years, the contingencies for oiled wildlife have been met via the coordination of the Washington Wildlife Rescue Coalition. Industry has supported this effort with contributions of equipment and mobile trailers. How will this law, which requires the Washington Wildlife Rescue Coalition to develop a rescue plan, work in conjunction with the new rules?

Response: The primary role of the Coalition, when formed, was to facilitate wildlife rescue during an oil spill, a role that is facilitated today through the Wildlife Branch of the Incident Command System. Currently, the primary planning venue in terms of a framework for Wildlife Branch response is through the Northwest Area Plan. In terms of contingency planning, the Coalition holds no authority to develop, oversee, or regulate contingency planning in Washington.

7. WSMC suggests that the Washington Wildlife Rescue Coalition continue to coordinate planning efforts. A plan should be developed that can be utilized by all plan holders. The expertise of the Washington Wildlife Rescue Coalition is important due to the technical and very sensitive nature of wildlife rescue. This expertise should not be disregarded or lost. WSMC does not support independent development of Wildlife rescue plans by individual plan holders. Such a mix of different plans and processes would result in chaos and uncertainty during the pressure and intensity of a major oil spill event. In WSMC's opinion, prior to July, 1999, the Wildlife Coalition's efforts at coordination of the planning efforts with a pre-identified treatment facility location and equipment worked well. Conversely, after July, 1999, when the Coalition offered up a fixed non-funded facility as the only option, WSMC believes that the planning and coordination efforts of the Coalition were less effective and not consistent with a flexible, coordinated and effective response. The Coalition should be allowed and encouraged to continue its work similar to the effective planning done prior to July, 1999.

Response: This comment will be passed along to the Coalition.

8. Is it the Department's intent to continue to rely upon the Washington Wildlife Rescue Coalition to coordinate wildlife rescue activities and planning in accordance with the requirements of current state law? If so, then it seems appropriate that the Coalition coordinate the planning efforts to meet planning and performance standards, using the standards of care, as adopted in this rule. What is missing from the rule that established the Washington Wildlife Coalition is a workable funding mechanism. WSMC suggests that this part of the rule be reviewed.

Response: The WDFW currently does not rely on the Coalition to coordinate wildlife rescue activities. Wildlife rescue coordination is conducted through the Wildlife Branch in the Incident Command System. There is a planning role relative to the Wildlife Branch through the Northwest Area Committee. Development of a Wildlife Branch plan would be an appropriate arena through which the Coalition could contribute. This comment will be passed along to the Coalition and to the Northwest Area Committee.

9. As discussed in item 1, above, the obvious question that has been frequently asked, is what will be the performance standard? How many birds must be cleaned and during what period of time? When does the location have to be ready for the first bird? Will the standard be written in such a way as to permit various options to be employed or will the standard be designed to leave a fixed facility as the only option? WSMC strongly suggests that the planning or performance standards, when developed leave open options for using available and suitable pre-identified facilities and locations for use as sites for rescue facility or facilities, on an as needed basis. It is hoped that the standard is not so stringent, inflexible and poorly designed as to require a fixed facility or facilities as the only option to meet the standards. WSMC supports the creation of improved wildlife rescue capabilities (including pre-defined locations or facilities), but does not endorse the construction of a fixed facility (or facilities) as the only alternative.

Response: The questions posed here are addressed in the draft proposed rule. There are requirements in terms of providing specific quantities and qualities of water, space, and air, and specific requirements with regard to when they must be provided. When oiled birds are collected, those determined (by medical examination) to be capable of withstanding the rehabilitation process make up the pool of birds that require care. The draft proposed rules specify the resources that shall be provided and the time lines in which they are required relative to that care. Upon review, we believe that these requirements are very clear and specific. Assuring that wildlife rehabilitation occurs in accordance with the proposed rules by definition addresses performance standards about which you inquire. Your comment will be forwarded to the Department of Ecology.

10. Overall the rules should defer to the Unified Command Process authority to "adapt" to the specifics of the incident. Without that flexibility built into the rules, liability concerns (and not what constitutes the best response) will drive the process by literal application of words to the event. Words should not preclude use of common sense adjustments to do

the right thing. Otherwise the supporting rules will pre-decide "exactly" what to do in all circumstances.

Response: These draft proposed rules regulate the manner by which oiled birds will be rehabilitated in Washington. This may or may not occur under the facilitation of an Incident Command System. Within the Incident Command System are processes and mechanisms through which operations, including Wildlife Rescue, are facilitated. Like any activity conducted through the ICS during a spill, the rehabilitation portion of Wildlife Rescue activities will need to be conducted with regard to state law. In accordance with provisions of the Northwest Area Plan, the Wildlife Branch is to be directed by a representative of the USFWS or WDFW (or their designee). As such, individuals from those agencies statutorily responsible for wildlife resource oversight are in the best position to ensure the flexibility you infer. We do not believe that there is a suitable mechanism, nor do we believe that it is appropriate, for state and federal trust agencies to defer their authority on this issue.

In conclusion, you have provided many important comments relative to different aspects of oiled wildlife rescue including collection, transport, euthanasia, mobile facilities, release criteria, contingency planning, etc. We appreciate their scope and level of detail.

In the interest of public process, I will see that these comments and the WDFW's corresponding response are posted on the agency's Oiled Wildlife Rule web page. Furthermore, I will forward the comments made on issues relating to the Coalition and the Department of Ecology to the appropriate party.

As you have illuminated, there are many tasks ahead with regard to realizing a statewide comprehensive oil spill program that accommodates the needs of the state's wildlife resources. I appreciate your engagement thus far and look forward to continuing to work with you on those tasks.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Larsen", with a stylized flourish at the end.

Eric Larsen, Manager
WDFW Oil Spill Section
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Olympia, WA 98501

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